



*First American Title  
Holding Company*

EXHIBIT 8  
DATE 5/22/07  
383

March 20, 2007

Testimony to the House Judiciary Committee

RE: House Bill 383 proposed "Montana Deed of Trust Law"

Dear Chairwoman Rice and Members of the House Judiciary Committee:

Thank you for the opportunity to submit my written comments regarding Senate Bill 383. I am available to discuss my comments at your convenience.

**Summary:**

This bill in its most simple terms changes decades of public policy regarding financing of real property. This bill would create new law without the acreage limitation of 40 acres as provided under the Small Tract Financing Act. While this bill is portrayed as an "alternative" to the Small Tract Financing Act, it undermines the basic premise in financing agricultural lands to create a method in which a lender can foreclose on a Ranch operation in less than 120 days with no right of redemption. SB 383 will create confusion by use of the same terms of "Deed of Trust", "Reconveyance" and others, which are also used in the Small Tract Financing Act. These terms with different meanings will confuse borrowers, lenders and real estate professionals. This bill also creates a foreclosure notice process that is not transparent to the public and is quite (detrimentally) different as compared to the Small Tract Financing Act. Overall this bill contains many ambiguous terms and phrases and is hard to understand. If there are some provisions of the "Small Tract Financing Act", that are "broke", that is where it should be addressed, rather than creating a new, untested body of law. Some of the more glaring deficiencies are identified below.

**I urge you to vote NO on this bill**

1. Section 2: in my experience, there are very few problems with existing law "Small Tract Financing Act" relating to financing of homes and business expansion. Mortgage Law has been "well worn" in Montana and needs no "alternatives".
2. Section 19, page 15, lines 21 – 29. Defines a "junior encumbrance" It is likely the beneficiary will want to foreclose ANY encumbrance that has been attached to the property by the Trustor, especially those that affect the value of their collateral. There is no provision for Conservation Easements, General Easements, Subdivision or Covenants / Restrictions. The foregoing types of documents impact real estate, are they foreclosed under this bill? No provision given for documents recorded after the Notice of Default. Are intervening documents foreclosed? If so, is notice required?

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3. Section 19, page 16, lines 11 & 12. "shall execute and retain an affidavit". There is no guidance as to how long the affidavit shall be retained. I object to this bill not having a requirement the affidavit be recorded. The "public record" should be transparent as to the foreclosure process and all steps of the foreclosure should be made available to the public through the recording process. What happens if the affidavit is lost? Is the foreclosure flawed? How can real estate professionals know the procedure was followed?
4. Section 20, page 18, lines 29 & 30. "When the property being sold consists of several known lots or parcels the must be sold separately.." "known" lots/parcels is very ambiguous. Known to WHO? Is a "Government Lot" as reflected on a County map a "lot" when otherwise it would NOT be conveyable by the Montana Subdivision and Platting Act? What if the "known" lots have higher value sold as a unit, MUST they still be sold separately?

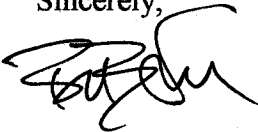
Section 20, page 19, line 2. "to the advantage" To WHOM's advantage? The borrower or beneficiary? Advantage as to selling the best parcel or worst parcel first?

Section 20, page 19, lines 3 – 5. After sufficient property is sold to satisfy the debt, the sale is to stop? This conflicts with page 21, line 10 wherein the beneficiary can make a second bid "in an amount higher then the original credit bid".

Section 20, page 19, lines 3-5. If property is sold by separate parcel, are easements created for access, utilities etc? If so, how are they created and what is width of said easement and what is it's use? Do any water rights get "split" in some fraction to the multiple owners?

Attached is a more exhaustive list of substantial critical concerns.

Sincerely,



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Comments attached to Robert Sewell's letter regarding SB 383:

The below comments are not inclusive of grammatical or diction issues.

1. Section 2: in my experience, there are very few problems with existing law "Small Tract Financing Act" relating to financing of homes and business expansion. Mortgage Law has been "well worn" in Montana and needs no "alternatives".
2. Section 3, page 2, No definition for a "Title Insurance Company Producer". This term is used throughout the bill.
3. Section 4. page 2, line 26. "with the formalities required".. This term is ambiguous.
4. Section 5. page 3, line 16 & 17. I object to language removing acreage limitation for reasons set forth in above summary.
5. Section 5. page 3, line 30. "notice of sale will be sent only" conflicts with page 15, line 11, wherein notice must be sent to any addresses "actually known" to the trustee; the term "will be sent" is ambiguous.
6. Section 6, page 4, line 4. "an institutional lender". Term is ambiguous, and does not identify private party lenders, saving and loan institutions.
7. Section 7, page 4 line 18 & 19. Notices should be recorded in **all** counties in which property is located, not "any" county.
8. Section 8, page 5, line 1. Use of "Title Insurance Company Producer" term is used and not defined as noted in comment no. 2 above.
9. Section 9, line 15 – 17. Creates liability if trustee refuses to reconvey property. What if Trustee refuses to reconvey for business or liability reasons? The Trustee is not a signatory to the Deed of Trust document and cannot control use of their name. There is no provision for a Trustee to relinquish their capacity as Trustee and avoid liability.
10. There are references throughout the bill as to a "Title Insurance Producer", this term is applied to an individual licensee, and the term is used in the bill as a Title Insurance Producer Company, but yet does not state as such.
11. Section 10, page 6, line 2. "evidence of full payment has been provided to the title insurer". This term is not defined and will likely create confusion in the public record and will focus additional scrutiny on the Reconveyance document recorded under this bill wherein real estate professionals will wonder if the Trustee's standard of "evidence of full payment" is sufficient. If a borrower pays

the Deed of Trust in full over the course of the loan, or it is paid with their own funds (rather than a refinance), there is no reason for the borrower to provide evidence of full payment to "THE" title insurer, when in fact there was no Title Insurer involved in the payoff; or the loan was refinanced without the use of a Title Insurer.

12. Section 10, page 8, line 21. Refers to "Mortgage". Term is used relative to a Reconveyance, and a trustee cannot "reconvey" a Mortgage under this bill.
13. Section 11, page 8, line 28, "the beneficiary or servicer notifies the title insurer" Does not identify HOW notice is to be given. Page 7, line 10 indicates the notice is to be by certified mail.
14. Section 13, page 10, line 1. "...in interest may pay". MAY pay? Seems to indicate the payment to cure the default is optional?
15. Section 13, page 10, line 9. "Trustee Sale Guaranty". While this is a product that is currently available, use of Title Insurance industry terms should not be used, what happens if the Underwriter or Montana Department of Insurance discontinues this product?
16. Section 13, page 10, line 27. "...recinds the declaration of default". There is no definition of "declaration" in this bill.
17. Section 19., page 12, lines 19 – 25. This should be eliminated for reasons set forth in comment 15.
18. Section 19, page 13, line 6. "issue a notice of sale" ISSUE is not defined.
19. Section 19, page 15, line 11. "actually known" is a very ambiguous term. Confusion is created wherein page 3, line 30 states that notice will ONLY be sent pursuant to the request for notice. Section 19 seems to state the opposite that notice will be sent to addresses "actually known" to the trustee.
20. Section 19, page 15, lines 21 – 29. Defines a "junior encumbrance" It is likely the beneficiary will want to foreclose ANY encumbrance that has been attached to the property by the Trustor, especially those that affect the value of their collateral. There is no provision for Conservation Easements, General Easements, Subdivision or Covenants / Restrictions. The foregoing types of documents impact real estate, are they foreclosed under this bill? No provision given for documents recorded after the Notice of Default. Are intervening documents foreclosed? If so, is notice required?
21. Section 19, page 16, lines 11 & 12. "shall execute and retain an affidavit". There is no guidance as to how long the affidavit shall be retained. I object to this bill not having a requirement the affidavit be recorded. The "public record" should be

transparent as to the foreclosure process and all steps of the foreclosure should be made available to the public through the recording process. What happens if the affidavit is lost? Is the foreclosure flawed? How can real estate professionals know the procedure was followed?

22. Section 20, page 16, line 29. “.. must be given”. “Given” is not defined. The process in which notice shall be given to the Internal Revenue Service should not be codified. The IRS defines their notice requirements, and those requirements change over time.
23. Section 20, page 17, line 6. “.. in either case with the consent” – what happens if consent is not given??
24. Section 20, page 18, line 6. “once a week for 3 consecutive calendar weeks”. This provision seems to indicate that the publication process could be achieved in 8 calendar days. Sunday, Monday, Sunday – 3 days of three weeks, assuming a week is Sunday to Sunday?